

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KARLA PARRA,

Plaintiff,

v.

CITIZENS TELECOM SERVICES
COMPANY LLC d/b/a FRONTIER
COMMUNICATIONS, a Delaware
limited liability company; MONICA
GRANDA, an individual; and DOES 1
through 20, inclusive,

Defendants.

Case No. 2:23-cv-02962-SPG-PD

**ORDER GRANTING PLAINTIFF'S
MOTION TO REMAND [ECF NO. 15]**

Before the Court is Plaintiff Karla Parra's motion to remand to the Superior Court of California for the County of Los Angeles. (ECF No. 15). Having considered the parties' submissions, the relevant law, and the record in this case, the Court finds this matter suitable for resolution without oral argument. *See* Fed. R. Civ. P. 78(b); Central District of California Local Rule 7-15. For the reasons set forth below, the Court **GRANTS** Plaintiff's Motion.

1 I. BACKGROUND

2 On March 16, 2023, Plaintiff Karla Parra filed a complaint in the Superior Court of
3 California for the County of Los Angeles (“LASC”) against Defendants Citizens Telecom
4 Services Company, LLC (“CTSC”) and Monica Granda. (ECF No. 1-2 (“Compl.”)).
5 Plaintiff asserts 13 causes of action, including claims of disability discrimination, marital
6 status discrimination, work environment harassment, retaliation, failure to provide
7 reasonable accommodation, and wrongful termination. The only cause of action Plaintiff
8 alleges against Granda is for work environment harassment. *See (id.* ¶¶ 114–130).

9 On April 19, 2023, CTSC timely removed this action from LASC based on diversity
10 jurisdiction. (ECF No. 1). On May 16, 2023, Plaintiff timely moved to remand. (ECF No.
11 15 (“Mot.”)). CTSC opposed on June 14, 2023. (ECF No. 22 (“Opp.”)). On June 28,
12 2023, Plaintiff replied. (ECF No. 28 (“Reply”)).

13 II. LEGAL STANDARD

14 To remove a case from a state court to a federal court, a defendant must file a notice
15 of removal “containing a short and plain statement of the grounds for removal.” 28 U.S.C.
16 § 1446(a). There are two bases for federal subject matter jurisdiction: (1) federal question
17 jurisdiction under 28 U.S.C. § 1331, and (2) diversity jurisdiction under 28 U.S.C. § 1332.
18 Diversity jurisdiction requires complete diversity, meaning each plaintiff has different
19 citizenship than each defendant. *Grancare, LLC v. Thrower by & through Mills*, 889 F.3d
20 543, 548 (9th Cir. 2018) (citing *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996)).

21 The party invoking the removal statute bears the burden of establishing that federal
22 subject-matter jurisdiction exists. *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th
23 Cir. 1988). “The removal statute is strictly construed, and any doubt about the right of
24 removal requires resolution in favor of remand.” *Moore-Thomas v. Alaska Airlines, Inc.*,
25 553 F.3d 1241, 1244 (9th Cir. 2009). There is a strong presumption against removal
26 jurisdiction, and federal jurisdiction “must be rejected if there is any doubt as to the right
27 of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)
28 (citation omitted).

1 III. DISCUSSION

2 A. Diversity

3 It is undisputed that both Plaintiff and Granda are citizens of California for purposes
 4 of diversity. *See* (Opp. at 8–9). Nevertheless, CTSC argues that Granda’s citizenship
 5 should be disregarded because, when CTSC removed this case, Granda had not yet been
 6 served. (*Id.* at 9–10). CTSC relies on the forum-defendant rule, which provides that “[a]
 7 civil action otherwise removable . . . may not be removed if any of the parties in interest
 8 properly joined and served as defendants is a citizen of the State in which such action is
 9 brought.” 28 U.S.C. § 1441(b)(2). CTSC contends that courts in the Central District
 10 permit “snap removal” of an action in which a named defendant has not been properly
 11 joined and served. (Opp. at 10). Because Granda had not been served at the time of
 12 removal, CTSC argues that the forum-defendant rule did not apply and that its removal of
 13 the case was therefore proper. (*Id.* at 9–10).¹

14 However, CTSC misconstrues the forum-defendant rule. An action qualifies as
 15 “otherwise removable solely on the basis of 1332(a),” if complete diversity of citizenship
 16 exists between the parties and if the amount in controversy exceeds \$75,000. *See* 28 U.S.C.
 17 § 1441(b)(2). The forum-defendant rule applies only where complete diversity exists when
 18 the unserved defendant is a citizen of the forum state. *See Ross v. United Airlines, Inc.*,
 19 No. 2:22-cv-01532-SB-GJS, 2022 WL 1302680, at *2 (C.D. Cal. Apr. 30, 2022). For
 20 example, if a “Nevada citizen sues a California citizen in California state court, the case is
 21 not subject to removal if the California citizen is ‘properly joined and served.’” *Id.* (citing
 22 28 U.S.C. § 1441(b)(2)). “While there is complete diversity in this hypothetical (whether
 23 or not the California citizen is served), the forum-defendant rule precludes removal if the
 24

25 ¹ CTSC also argues that the Court should not consider Plaintiff’s motion pursuant to Local
 26 Rule 7-4 because Plaintiff did not meet and confer with CTSC’s counsel prior to filing this
 27 motion. (Opp. at 9). Plaintiff responds that she informed CTSC in writing of her intent to
 28 file a motion to remand on April 30, 2023, and reiterated her intention on multiple
 occasions thereafter. (Reply at 2). The Court accepts Plaintiff’s representation and finds
 that Local Rule 7-4 was satisfied.

1 California citizen is ‘properly joined and served.’” *Id.* The forum-defendant rule just
 2 prohibits properly joined and served defendants who are citizens of the forum state from
 3 removing actions when *complete diversity* exists.

4 However, the forum-defendant rule does not apply to defendants who destroy
 5 diversity, such as Granda. It is well-established that the Court “cannot ignore a defendant’s
 6 citizenship simply because the defendant has not been served.” *See Gralnik v. DXC Tech.,*
 7 *Inc.*, No. CV 21-7436-GW-JCX, 2021 WL 5203333, at *3 (C.D. Cal. Nov. 8, 2021) (citing
 8 *Chavez v. Schlumberger Tech. Corp.*, No. 21-CV-04817-MWF-(MARx), 2021 WL
 9 3403741, at *3 (C.D. Cal. Aug. 4, 2021); *see also Greenway Nutrients, Inc. v. Pierce*, No.
 10 CV 22-03322-MWF (AFMx), 2022 WL 17486359, at *2 (C.D. Cal. Dec. 6, 2022) (finding
 11 that courts “must consider the citizenship of all [d]efendants in evaluating diversity
 12 jurisdiction, regardless of any service issues”). Thus, in removing this case, CTSC “not
 13 only misapplies the forum-defendant rule but also flies in the face of Ninth Circuit law.”
 14 *See Ross*, 2022 WL 1302680, at *2 (citing *Clarence E. Morris, Inc. v. Vitek*, 412 F.2d 1174,
 15 1176 (9th Cir. 1969) (holding that the existence of diversity in the context of removal “is
 16 determined from the fact of citizenship of the parties named and not from the fact of
 17 service”)); *see also Preaseau v. Prudential Ins. Co. of Am.*, 591 F.2d 74, 78 (9th Cir. 1979)
 18 (“[The Ninth Circuit] has specifically rejected the contention that § 1441(b) implies that
 19 service is the key factor in determining diversity.”).

20 CTSC’s assertion that the Ninth Circuit has not conclusively decided this issue is
 21 incorrect. *See* (Opp. at 10). The Ninth Circuit has not yet addressed whether the Forum
 22 Defendant Rule bars pre-service removal in actions where complete diversity exists. *See*
 23 *Hong Kong Cont’l Trade Co. Ltd. v. Nat. Balance Pet Foods, Inc.*, No. LA CV22-00571
 24 JAK (AFMx), 2023 WL 2664246, at *4 (C.D. Cal. Mar. 28, 2023). However, the Ninth
 25 Circuit has conclusively held that the Forum Defendant Rule cannot be employed to a
 26 ignore “a resident defendant whose presence would defeat diversity.” *See Vitek*, 412 F.2d
 27 at 1176 n.1; *see also Greenway*, 2022 WL 17486359, at *2 (noting that “courts have
 28 uniformly held the same – e.g., that the Court may not exercise diversity jurisdiction solely

1 because only diverse defendants have been served, while non-diverse defendants have not
 2 been served”).² Thus, because diversity is determined based on the citizenship of the
 3 parties and not from the fact of service, the Court must consider Granda’s citizenship.
 4 Since the parties do not dispute that both Plaintiff and Granda are citizens of California,
 5 the Court lacks diversity jurisdiction over this action.

6 **B. Fraudulent Joinder**

7 Alternatively, CTSC argues that complete diversity exists because Plaintiff
 8 fraudulently joined Granda as a sham defendant. (Opp. at 11). Although diversity
 9 jurisdiction usually requires complete diversity of citizenship, that requirement is relaxed
 10 “where a non-diverse defendant has been fraudulently joined.” *Hunter v. Philip Morris*
 11 *USA*, 582 F.3d 1039, 1043 (9th Cir. 2009). Joinder can be fraudulent in one of two ways.
 12 First, there can be “actual fraud in the pleading of jurisdictional facts.” *Grancare*, 889 F.3d
 13 at 548–49. Second, it can be fraudulent “if the plaintiff fails to state a cause of action
 14 against a resident defendant, and the failure is obvious according to the settled rules of the
 15 state.” *Hunter*, 582 F.3d at 1043 (quoting *Hamilton Materials, Inc. v. Dow Chem. Corp.*,
 16 494 F.3d 1203, 1206 (9th Cir. 2007)). Conversely, “if there is any possibility that the state
 17 law might impose liability on a resident defendant under the circumstances alleged in the
 18 complaint, the federal court cannot find that joinder of the resident defendant was
 19 fraudulent, and remand is necessary.” *Id.* at 1044.

22 ² Every case cited by CTSC is inapposite because complete diversity existed between the
 23 parties in each case. *See, e.g., Choi v. Gen. Motors LLC*, No. CV 21-5925-GW-MRWx,
 24 2021 WL 4133735, at *2 (C.D. Cal. Sept. 9, 2021) (finding that the plain language of §
 25 1441(b)(2) allowed snap removal for an action where diversity of citizenship was not
 26 disputed); *Monfort v. Adomani, Inc.*, No. 18-CV-05211-LHK, 2019 WL 131842, at *1
 27 (N.D. Cal. Jan. 8, 2019) (permitting snap removal for an unserved defendant who was a
 28 citizen of the forum state but diverse from the plaintiff); *Dechow v. Gilead Sciences, Inc.*,
 358 F. Supp. 3d 1051, 1054 (C.D. Cal. 2019) (“The parties do not dispute that complete
 diversity exists . . .”).

1 The burden of proving fraudulent joinder is a heavy one. “[T]here is a general
 2 presumption against fraudulent joinder,” but it will be found if “the plaintiff fails to state a
 3 cause of action against a resident defendant, and the failure is obvious according to the
 4 settled rules of the state.” *Hamilton*, 494 F.3d at 1206 (quotation omitted). The removing
 5 party must prove there is “no possibility that the plaintiff could prevail on any cause of
 6 action it asserted against the non-diverse defendant.” *Gonzalez v. J.S. Paluch Co.*, No. 12-
 7 08696-DDP (FMOx), 2013 WL 100210, at *4 (C.D. Cal. 2013). Merely a “glimmer of
 8 hope” that plaintiff can sustain a claim is enough to prevent application of the fraudulent
 9 joinder doctrine. *Id.* “In determining whether a defendant was fraudulently joined, the
 10 Court need only make a summary assessment of whether there is any possibility that the
 11 plaintiff can state a claim against the defendant.” *Marin v. FCA US LLC*, No. 2:21-CV-
 12 04067-AB-PDX, 2021 WL 5232652, at *3 (C.D. Cal. Nov. 9, 2021).

13 Plaintiff’s fifth cause of action against Granda alleges a work environment
 14 harassment violation under the Fair Housing and Employment Act (“FEHA”). (Mot. at
 15 11). The FEHA makes it unlawful “[f]or an employer . . . or any other person” to harass
 16 an employee because of physical disability, medical condition, or marital status. Cal.
 17 Gov’t. Code § 12940(j)(1). “The elements of a hostile work environment claim under
 18 FEHA are (1) the plaintiff belongs to a protected group; (2) the plaintiff was subjected to
 19 unwelcome harassment because of being a member of that group; and (3) the harassment
 20 was sufficiently severe or pervasive to alter the conditions of employment and create an
 21 abusive working environment.” *Randall v. Automatic Data Processing Inc.*, No. 5:21-cv-
 22 01223-JWH-KKx, 2022 WL 843460, at *3 (C.D. Cal. Mar. 21, 2022) (citation omitted).

23 There is more than a “glimmer of hope” that Plaintiff can establish a harassment
 24 claim against Granda. Plaintiff alleges that she injured her arm and received work
 25 restrictions from her doctor and that, after her injury and request for accommodations,
 26 Granda “started micromanaging Plaintiff, talking down to her, and threatening to write
 27 Plaintiff up even when she was properly performing her job duties.” (Compl. ¶¶ 12–13).
 28 Plaintiff additionally alleges that Granda made disparaging comments about her marital

status while Plaintiff was “going through a separation.” (*Id.* ¶ 14). For example, when Plaintiff approached Granda to request time off to care for her children, Granda commented, “I am a single mom and I don’t need anyone to help me.” (*Id.*). Plaintiff further alleges that Granda did not allow Plaintiff to use family leave to take care of her disabled son and retaliated against Plaintiff during the COVID pandemic when Granda asked Plaintiff to come into work and explain her absences even though CTSC had asked their employees to work remotely. (*Id.* ¶¶ 17, 19).


Even if CTSC raises valid arguments regarding whether Plaintiff’s harassment claim, “as presently alleged, could survive a motion to dismiss, the fact that a claim may fail on a motion to dismiss does not necessarily mean that [Granda] was fraudulently joined.” *See Palencia Caba v. Caleres, Inc.*, No. 2:21-CV-02012-KJM-AC, 2022 WL 1138077, at *4 (E.D. Cal. Apr. 18, 2022) (finding similar allegations sufficient to reject a claim of fraudulent joinder); *Randall*, 2022 WL 843460, at *3 (same). Thus, the Court finds that CTSC has not met its heavy burden to show that Granda was fraudulently joined as a sham defendant. Accordingly, this Court lacks federal subject matter jurisdiction because the parties are not diverse and Plaintiff alleges only state causes of action.

IV. CONCLUSION

For the foregoing reasons, Plaintiff’s Motion to Remand is **GRANTED**. This action is **REMANDED** to the Los Angeles County Superior Court.

IT IS SO ORDERED.

Dated: August 7, 2023


 HON. SHERILYN PEACE GARNETT
 UNITED STATES DISTRICT JUDGE